

Docket No.: 201081US3

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231



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RE: Application Serial No.: 09/750,664
Applicants: Hiroshi FUKUMOTO, et al.
Filing Date: January 2, 2001
For: LIQUID SPRAYER
Group Art Unit: 3752
Examiner: KIM, C. S.

SIR:

Attached hereto for filing are the following papers:

PROVISIONAL ELECTION

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



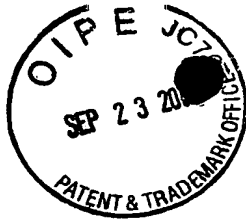
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201081US3



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: :
Hiroshi FUKUMOTO, et al. : EXAMINER: KIM, C. S.
SERIAL NO: 09/750,664 :
FILED: JANUARY 2, 2001 : GROUP ART UNIT: 3752
FOR: LIQUID SPRAYER

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SIR:

In response to the Election of Species Requirement dated August 22, 2002, Applicants elect with traverse the Species A, as shown in Figure 1, corresponding to Claims 1-3, a liquid sprayer. Applicants make this election based on the understanding that Applicants are not prejudiced against filing one or more divisional applications that cover the non-elected claims.

MPEP §806.04(f) requires:

...Claims to be restricted to different species must be mutually exclusive...
The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics. This provides one basis for traversing the election of species requirement.

Additionally, the Office Action merely states that the present application contains nine patentably distinct species. No basis whatsoever is given in support of such a finding as required by MPEP § 816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere

statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given....

Moreover, a proper search of any one of the species cited in the Office Action would also necessarily include a search of the other species as well. Examination of all species in the present application would therefore not present a substantially greater burden on the part of the office, whereas election of a single species presents a substantial burden on the Applicants. It is therefore respectfully submitted that the reasons for insisting upon an election of species should be set aside.

Accordingly, it is respectfully requested that the requirement to elect a single species be withdrawn, and that a full examination on the merits of Claims 1-20 be conducted.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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